

The Honourable John Mansfield AM QC
Aboriginal Land Commissioner
Office of the Aboriginal Land Commissioner
Level 4, Jacana House, 39-41 Woods Street
DARWIN NT 0800

Via email: AboriginalLandCommissioner@network.pmc.gov.au / elena.zola@network.pmc.gov.au

Dear Commissioner

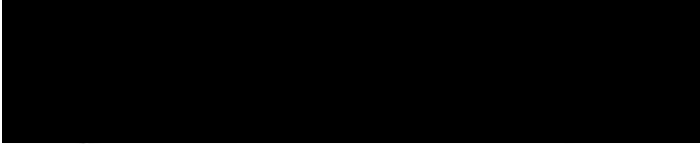
Invitation to participate: Review of detriment issues – Garrwa (Wearyan and Robinson Rivers Beds and Banks) Land Claim No. 178; McArthur River Region Land Claim No.184 and Manangoora Region Land Claim No.185

I refer to your letter dated 15 December 2017 and to subsequent correspondence in relation to this matter regarding the provision of detriment comment on behalf of the Northern Territory of Australia by 16 March 2018.

Please find attached Detriment Review Table prepared by this Office in relation to these land claims including detriment submissions on behalf of the various NT Government agencies received by this Office.

Please do not hesitate to contact me if you have any queries.

Yours sincerely



Kalliopi (Poppi) Gatis
Senior Lawyer
16 March 2018

Attached (*) Detriment review Table for Land Claim No. 68 and Attachments 1-5 to same

cc. Mr David Avery, Northern Land Council
via email: david.avery@nlc.org.au

DETRIMENT REVIEW: GARRWA (WEARYAN AND ROBINSON RIVERS BEDS AND BANKS) LAND CLAIM 178; MCARTHUR RIVER REGION LAND CLAIM NO. 184 AND PART MANANGOORA REGION LAND CLAIM NO. 185

UPDATED DETRIMENT AND PROPOSED PATTERNS OF LAND USAGE INFORMATION ON BEHALF OF THE NORTHERN TERRITORY GOVERNMENT FOR CONSIDERATION OF THE ABORIGINAL LAND COMMISSIONER

Key

NTP = NT Portion No.

CLP = Crown Lease in Perpetuity

PPL = Perpetual Pastoral Lease

VCL = VCL

ALT = Aboriginal Land Trust land held under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*

TABLE 1

McArthur River Region LC 184 and part Manangoora Region LC 185 (area (i) : intertidal zone adjacent to Managoora and Greenbank Station, NT Portion 812): Report No. 62 of the Aboriginal Land Commissioner		
Item	Olney J detriment findings and any additional detriment per ALC letter of 15.12.17	Additional/new detriment information
1.	<p>Parks and Wildlife Commission of the Northern Territory (PWCNT)</p> <p>a) During the first inquiry, the Parks and Wildlife Commission submitted that the intertidal zone, which already included Barranyi National Park (North Island), formed a part of a broader complex of marine, coastal and island ecosystems, with the mudflats, mangroves and open saline wetlands within the claim area containing the richest diversity of plant and animal life.</p>	<p>The PWCNT, which is now part of Department of Tourism and Culture (DTC), advise:</p> <p>a) In 20002/2003 when the inquiry took place it was submitted that a grant of title would be to the detriment of the intertidal zone and the complex marine, coastal and island ecosystems.</p> <p>b) The Yanyuwa Indigenous Protected Area (IPA) was declared in 2011, covering the lower reaches of the McArthur River and five of the Sir Edward Pellew Group of islands. The IPA is competently managed by</p>

	<p>b) It was submitted that restrictions to this area would thus detriment the Parks and Wildlife Commission's conservation activities. This was supported by evidence that the claim area had been proposed as a possible nomination to the East Asian Australasian Shorebirds Site Network, because of the significant numbers of migratory shorebirds inhabiting the area. At the time, there had also been contemplation regarding the establishment of a new coastal marine park within the claim area.</p>	<p>the Commonwealth-funded li-Anthawirriyarra rangers operating from Borroloola. The Department's view in 2018, is that the grant would not be to the detriment of the conservation activities of the Department and would likely benefit the Indigenous land and sea management activities in the area.</p>
<p>2.</p>	<p>N/A</p>	<p>Department of Natural Resources and Environment (DENR) advise:</p> <p>PART 1: PASTORAL LAND USE</p> <p><u>Land Claim No. 184: intertidal zone</u></p> <p><u>Adjacent land holders to intertidal zone claimed are:</u></p> <p>NTP 4319 held under PPL 1051 by Mount Isa Mines (MIM) Limited (McArthur River Station)</p> <p>NTP 812 — Pastoral Lease No. 685 held by Manangoora Station (Anderson Family)</p> <p><u>Detriment/proposed patterns of land usage comments:</u></p> <ul style="list-style-type: none"> a) Weed and feral animal management: the <i>Pastoral Lands Act</i> (NT) (PLA) requires a pastoral lessee to prevent or minimise degradation of or other damage to land and its native flora and fauna. This requires a lessee to control feral animals and weeds on waterways including on the banks of rivers adjoining a pastoral property. Access to the beds and/or banks of a river forming the boundary to a pastoral lease is required to control incursions and prevent widespread weed problems through the lease area and any adjacent land; b) The pastoral lessees, their staff and visitors may access the waterways including the beds and banks of the rivers/coastline for camping and recreational purposes. The general public also has a right to access waterways pursuant to s79 PLA. c) Future diversification activities may require the use of the bed and banks of the river and any restrictions imposed on accessing this area may

		<p>impede on proposed patterns of land usage and the pastoralists future to generate an alternative source of income.</p> <p>d) Future or proposed land usages include tourism, fishing tours, agricultural activities (taking water from the river for irrigation) etc. The non-pastoral use provisions under the <i>Pastoral Land Act</i> have operated since 1992 and non-pastoral activities contribute economic returns to the NT economy.</p> <p>e) The lessee has the right to graze and water cattle on his land adjoining waterways pursuant s13 of the <i>Water Act</i> (NT). The lessee may take water for domestic purposes, drinking water for grazing stock on the land and may wish to install pipes or pumps in the claim area for accessing the water supply in the future: refer ss10 and 11 of the <i>Water Act</i>.</p> <p><u>Land Claim No. 185: intertidal zone</u></p> <p><u>Adjacent land holders to intertidal zone claimed are:</u></p> <p>NTP 812 — Pastoral Lease No. 685 held by Manangoora Station held by the Anderson Family</p> <p>NTP 811 held by John Henry Keighran under PL 684 (Greenbank Station)</p> <p><u>Detriment/proposed patterns of land usage comments:</u></p> <p>f) Manangoora and Greenbank Station employees enter the foreshore areas on horseback and in motor vehicles to recover cattle from the salt flats, mudflats and beach/foreshore areas.</p> <p>g) Manangoora owners offer access through the property to fishers and campers seeking access to the river bank. They charge a 'gate fee' for each entry.</p> <p>h) Manangoora Station has previously held a non-pastoral use permit (expired) for tourism (bush camping, cultural and recreational tourism activities). The permit is in the process of being renewed under the new permit system under the <i>Pastoral Land Act</i>. Tourism activities are still being undertaken.</p> <p>i) Greenbank Station — cattle grazing in the intertidal zone. Could not prevent cattle from grazing in these areas.</p> <p>j) The Objects of the <i>Pastoral Land Act</i> require a pastoral lessee to prevent or minimize degradation of or other damage to the land and its native flora and fauna. To meet these requirements, the lessee must control feral animals and weeds including those on the beds and banks</p>
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		<p>of any waterways as there are often high weed incursions within those waterways. Access to waterways including accessing river banks and/or beds is required in order to control any incursions and prevent widespread weed problems throughout the lease and any neighbouring land.</p> <p>k) The Manangoora and Greenbank lessee's, their staff and visitors, may access the waterways, including the beds and banks of the rivers/coastline for camping and fishing and other recreational purposes. This is common practice. Under the <i>Pastoral Land Act</i>, Part 6 section 79, the general public also has the right to access waterways.</p> <p>l) The Manangoora and Greenbank lessees have the right to graze and water cattle on their land adjoining waterways pursuant to the <i>Water Act</i> (NT).</p> <p>m) The lessees may take water for domestic purposes, drinking water for grazing stock on the land and may wish to install pipes or pumps in the claim area for accessing the water supply in the future. Under the <i>Water Act</i> (section 13) the pastoral lessee are entitled to have their cattle access the banks of a boundary waterway. This provision has been in effect since 1992.</p> <p><u>Manangoora Station</u></p> <p>n) The Anderson family are the holders of the pastoral lease over Manangoora Station. The former Commissioner commented about the detriment that may be suffered by Mr Stephen Anderson as one of the leaseholders of Manangoora Station in the event of the grant of the claim area adjacent to Manangoora Station at paragraphs 92-96 of Report No. 62.</p> <p>o) The Andersons are Aboriginal persons with traditional interests in Manangoora Station which may extend to the claim area.</p> <p>p) In November 2015, Justice Mansfield of the Federal Court made a native title consent determination over Manangoora Station recognising the existence of exclusive native title rights and interests on the basis of the application of s47 <i>Native Title Act</i> (Cth) (NTA) to the pastoral lease. Whilst not required pursuant to s47 NTA, the Anderson family agreed to the claim under s47 NTA and they were included as part of the native title holding group in relation to the determination over the pastoral lease. Accordingly the Anderson family may have traditional interests in the whole or part of the claim area and may therefore no longer hold the detriment and land use concerns expressed during the original land claim inquiry. If this is the case, then any use of the intertidal zone</p>
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and/or river for pastoral, tourism, domestic or other purposes by the Anderson family is unlikely to be objected to by the other traditional owners and limited or no detriment is likely to result. If however, some other members of the traditional owner group are responsible for part of the intertidal zone and/or river with the result that restrictions or denial of access is imposed to the area then this may impede the pastoralists ability to generate an alternative source of income;

- q) If however, the pastoral lease were to be sold to a party not affiliated with the traditional owners then it may impact proposed patterns of land usage in relation to the claim region if any restrictions or denial of access to the intertidal zone and/or river were to result.

Greenbank Station

- r) At the time of hearing of LC 184/185 Mr Keighran as lessee of Greenbank Station wrote to the then Commissioner to indicate his objection to the grant of the land adjacent to Greenbank. The former Commissioner commented in Report no. 62 at paragraphs 90 and 91 as to the detriment that may result to Mr Keighran and his family in the event of a grant of the claimed land;
- s) In November 2015 the Federal Court made a native title consent determination over Greenbank station recognising the existence of exclusive native title rights and interests on the basis of the application of s47 NTA to the pastoral lease. Whilst not required pursuant to s47 NTA, Mr Keighran and his family agreed to the exclusive native title claim under s47 NTA and were included as part of the native title holding group in relation to the determination over the pastoral lease. Accordingly Mr Keighran and his family may have traditional interests in the claim area and may therefore no longer hold the concerns expressed during the original land claim inquiry. If this is the case, then any use of the intertidal zone for pastoral, tourism, domestic or other purposes by Mr Keighran or his family is unlikely to be objected to by the other traditional owners and limited or no detriment is likely to result. If however, some other members of the traditional owner group are responsible for part of the intertidal zone with the result that restrictions or denial of access is imposed to the area then this may impede the pastoralists' ability to generate an alternative source of income.
- t) If however, the pastoral lease were to be sold to a party not affiliated with the traditional owners then it may impact proposed patterns of land usage in relation to the claim region if any restrictions or denial of access to the intertidal zone were to result.

- u) DENR advise that the Environment Division has no specific or current future interest in the areas the subject of this claim, and is not aware of any private interests that would be affected by a grant of Aboriginal land beyond those already identified by NT Agencies. Application of relevant NT legislation regarding the environment is not expected to be affected by the grant of the claim area as Aboriginal land

PART 2: WATER RESOURCES:

- v) Access to undertake water monitoring duties is provided under s20(1) and (2) of the *Water Act* (NT).
- w) The Water Resources Division of DENR advise that there are no active water monitor infrastructure in the land claim areas and no monitoring activity or studies are currently in progress within the claim areas. However, future water investigations for planning and development may necessitate access by Water Resources staff onto the claim areas for constructing and/or monitoring of relevant infrastructure. Historic sites (also known as "legacy sites" are no longer used by the Division but the infrastructure may remain in situ. It is common for the Division to re-establish historic gauging stations as new water investigations require.
- x) Data collected by gauging stations provides continuous record of river height and flow to improve the understanding of the hydrology, water quality and geomorphology of the river and key elements of water management. The replacement value of a typical gauging station is \$150,000.00.
- y) There are no legacy sites in the LC 178 and LC 185 claim area. However, there is one legacy site G9070120 in the claim area, McArthur River, Black Rock Landing (662479E, 8239852N). This site may contain some river monitoring infrastructure.
- z) Provided there is direct access to the rivers, extraction from the river for stock and domestic use is permitted. The extraction of water for any other purpose is not permitted without a water extraction licence.
- aa) Surface extraction water licences may be issued to specific landholders bordering a river who meet the application requirements and assessment conditions of the *Water Act*. The land holder will maintain pumping infrastructure on the river bank to access water. Staff from the Water Resources Division inspect the pumping infrastructure annually to ensure it conforms with relevant standards and to validate meter

		readings. SFNT has been instructed that there are no extractive water licences in the claim areas.
3.	<p>A central concern was whether the King Ash Bay boat ramp was protected by s14 ALRA. The Commissioner did not make a final determination about the inclusion of the boat ramp.</p>	<p>Transport Division of Department of Infrastructure, Planning and Logistics (DIPL) advise:</p> <ul style="list-style-type: none"> a) Bing Bong Port has aids to navigation installed and owned by McArthur River Mines. b) Marine safety, DIPL currently has aids to navigation installed in: <ul style="list-style-type: none"> i. Mule Creek ii. McArthur River (in the river system and mouth area); iii. Carrington River (Both within the river system and mouth area). c) All of these aids to navigation are regulated under the <i>Marine Act</i> (Part 6). d) In order to protect the safety of navigation, DIPL needs the ability to establish, dis-establish, move, alter and/or maintain aids to navigation in any of the waterways of the NT. A right of access for these reasons across Aboriginal land is preserved pursuant to s151 of the Marine Act. e) King Ash Bay boat ramp and car park: <ul style="list-style-type: none"> i. The ramp provides public access to the McArthur River and surrounding waterways. The exclusion of the boat ramp, car park and water approach is recommended to support ongoing public use of the infrastructure (this is consistent with the ALC Report 64 (LC 178)). ii. It has been advised that the DPIR is currently undertaking a design consultancy to review the infrastructure and potential improvements for the future which will include bathymetric surveys; and iii. Open and unrestricted access to the water approach to the public boat ramp is required to support maintenance works to the ramp in the river and to mitigate marine safety hazards such as silt deposits given public use of the facility.
4.	<p>f) Commissioner Olney comment at paragraph 30 of LC 70, Report No. 62 stated:</p> <p>The single exception referred to in the previous paragraph is a road reserve which separates NTP 3898 and NTP 3899. The road extends only to the top of the bank of the river beyond which there is a concrete ramp</p>	<p>Crown Land Estate, Division of DIPL advise:</p> <ul style="list-style-type: none"> a) CLP 3899 over NT Portions 3898 and 3899 is held by the King Ash Bay Fishing Club Inc for the purpose of tourism, recreation, camping and ancillary. The Club members access the river from the King Ash Bay Boat Ramp and from various areas along the lease boundary. The claim

built to facilitate boat access to the river. The ramp is clearly within the area claimed. The boat ramp has a number of characteristics which may justify it being treated as "a road over which the public has a right of way" (see *re Warumungu Land Claim, ex parte Attorney General* (NT) 77 ALR 27). If this is so, it does not change its status as unalienated Crown land (see *re Mataranka Area Land Claim, R v Maurice, ex parte Banibi Ply Ltd*, 70 ALR 53; and on appeal at 76 ALR 655) but rather it would be necessary for it to be identified as such in any grant of title and excluded from the grant (see Land Rights Act, s12(3)). Although the question of the ramp's status has not been raised by any of the parties, it is proposed later in this report to offer some comments in relation to it.

Further at paragraph 163 of the Report he stated:

Map 3 annexed to this report clearly depicts an arm of Batten Road at King Ash Bay extending to the bank of the McArthur River adjacent to the western boundary of NTP 3899. The map also indicates the location of the boat ramp and contains the notation "Boat ramp runs from top of bank into river". In a letter dated 2 April 2001 addressed to the Aboriginal Land Branch of the Department of Lands, Planning and Environment (exhibit ALC 22) the Manager Planning of the Department of Transport and Works wrote: Re: King Ash Bay Boat Ramp

With reference to your e-mail of 29 March 2001 regarding the boat ramp at the King Ash Bay Fishing Club.

The road reserve is bounded by NT Portion 3898 and NT Portion 3899 and the top of bank of the McArthur River. The Department maintains the road to the top of the boat ramp. The boat ramp was constructed outside of the road reserve and managed by the Department of Primary Industries & Fisheries. Control of the ramp has recently been passed to this Department and would need to be specifically excluded from any claim.

Apart from the reference to excluding the ramp for any claim, none of these facts is in issue. Nor indeed is the fact that during the course of the inquiry there were numerous occasions when motor vehicles with boat trailers were observed to drive from the road onto the boat ramp for the

may impact on the Club (and its members) access and use of the river and boat ramp.

- b) SFNT submit that consideration should be given to the King Ash Bay boat ramp being excluded from any proposed grant as Aboriginal land, on the basis that it is a "road over which the public has a right of way" within s12(7) ALRA for the reasons given by the former Commissioner as set out in the adjacent column.

	<p>purpose of either launching a boat into, or removing one from, the river. The boat ramp is clearly an extension of the road.</p> <p>There is no way of determining by mere observation where the road reserve finishes. ----- End quote -----</p>	
<p>5.</p>	<p>The Department of Primary Industry and Fisheries submitted that the McArthur River was a popular fishing attraction because of its significant barramundi and mud-crabbing stocks, for both commercial and recreational fishermen. Any restrictions on fishing would financially burden NT Fishermen, limiting the public right to fish. It would also financially burden the Department as it is likely they would have to reduce the number of commercial licences for both fisheries.</p>	<p>The Department of Primary Industry and Resources (DPIR) has responsibilities for a number of areas. The DPIR was established by the Northern Territory Government on 12 September 2016. The department brings together many of the key functions that drive economic development on Northern Territory (NT) lands, coastal areas and inland waterways, and its operations cover the entire NT. Its business sector areas are mines and energy, fisheries and product integrity, primary industry development and the NT Geological Survey.</p> <p>Fisheries Division of DPIR advise that:</p> <ul style="list-style-type: none"> a) DPIR compiles information relating to existing fishery interests and practices in the Northern Territory to regulate activities administered under the Act. These fishery interests and practices relate to all Northern Territory Waters, including rivers and waters overlying the inter-tidal zone. b) The Act provides for the conservation and management, by regulation, of all fish and aquatic life in Northern Territory Waters, to maintain their sustainable utilisation by all interested user groups including traditional Aboriginal usage. The Act also seeks fair, equitable and optimal use of those resources with regard to providing benefit to the Northern Territory. c) Save for aquaculture, fish and aquatic life are deemed to be common property resources which, under the Act, are managed and conserved on behalf of the Northern Territory community as a whole. d) The use of fish and aquatic life in all coastal and inland waters of the Northern Territory is a regulated activity administered under the Fisheries Act (NT). <p><u>Commercial fishing</u></p>

- e) Key Fisheries in the area include Mud Crab, Barramundi and King Threadfin, and these resources are the basis of major commercial industry activity and is among the most important commercial fishing areas in the Territory.
- f) This resource also has very strong commercial value in the MacArthur River area. Since 2008, the commercial Barramundi, King threadfin and Mudcrab catch figures for claim areas are as follows:

Year	Barramundi (Kg)	King Threadfin (Kg)	Mud Crab (Kg)
2008	25875	4800	163722
2009	38275	1663	225032
2010	35914	166	138570
2011	30020	266	97765
2012	43480	1833	106695
2013	22645	1499	62314
2014	30862	3749	75922
2015	21900	1566	45372
2016	15555	1153	47337
2017*	12075	666	99014

- g) Commercial fishing also stands as an important driver of economic activity in the region, and directly underpins the livelihood of several of the commercial operators in the region.

Recreational Fishing

- h) The McArthur River, within the boundaries of LC184, is a high value recreational fishing area.
- i) The most recent data on recreational fishing in this area is sourced from the 'Survey of Recreational Fishing in the NT 2009-10'. Visitor fishing effort is proportionally very high in this region, with more than 90% of fishing on average attributed to interstate or overseas based visitors (in contrast to the average of 40% in other parts of the NT). A likely reason for this disparity is that the King Ash Bay Fishing Club is located within the claim area, which is a known destination for interstate recreational fishers, particularly those from Queensland and New South Wales.
- j) The survey estimated there was a total of 36,816 days fished by NT residents and visitors (aged over 5 years) in the lower McArthur area during April – November 2009.
- k) The Land Claims are contained within two survey regions, 36 (McArthur River lower) and 37 (Wearyan and Robinson Rivers). Data from both

resident and visiting anglers is not available for the Wearyan and Robinson Rivers. However, both areas provide bank-side camping opportunities and are known to be frequented by anglers during the dry season months.

Fishing Tour Operators

- l) NT Fisheries collects data from Fishing Tour Operators about where they have conducted their operations. Data currently available shows the number of Fishing Tour Operators active (by year) in the McArthur River.

No. licences that worked the area

2008	1
2009	1
2010	2
2011	2
2012	1
2013	2
2014	4
2015	3
2016	4
2017*	2

- m) Fishing tourism generates a significant amount of economic activity in the region, and if access arrangements are modified this may potentially have adverse impacts on expenditure and on individual business operations.

Scene Setting: access negotiations

- n) Since the High Court decision on Blue Mud Bay, the NT Government has been negotiating access arrangements for access to affected tidal waters overlying Aboriginal land. Many previous land grants have been made to the "mean low water mark" which is not defined on nautical charts and is in a practical sense unenforceable. The Blue Mud Bay decision has created considerable uncertainty for commercial and recreational fishing sectors over access to waters. While seven agreements have been reached to date including the upper and lower Daly, the negotiation process is time consuming and resource intensive for Land Councils and little progress has been made with regard to negotiating agreements over remaining areas.

		<p>o) In relation to the claim area and surrounding claimed areas, there is no certainty that a future access agreement would be reached for fishing in the claimed waters in which case neither recreational or commercial fishers would have any access to the waters overlying the claimed land.</p> <p>p) The Blue Mud Bay decision essentially provides that any Aboriginal land covered from time to time by tidal waters is subject to authorisation administered by relevant land councils under the permit system established under the <i>Aboriginal Land Act (NT)</i>. The effect of the BMB decision, in combination with the existing areas granted as Aboriginal land down to low water mark along the NT coastline, and the 12 outstanding beds and banks claims heard by Olney J as former Commissioner and the 10 outstanding beds and banks claims gives rise to a strong risk that proposed patterns of land usage associated with recreational and commercial fishing will be detrimentally impacted upon if widespread access is withdrawn or restricted.</p> <p>q) Even if agreement is reached, it may not be permanent and not provide certainty and security for commercial development in the areas. It will have an ongoing cost for the Territory Government and taxpayers, as well as resourcing implications for Government agencies and Land Councils to review and renegotiate agreements on an ongoing basis.</p> <p><u>Importance of whole of fishery approach to fisheries management</u></p> <p>r) Approximately 86% of the coastline of the NT is Aboriginal land down to low water mark. If all outstanding claims to river and intertidal zones resulted this figure would increase proportionately.</p> <p>s) The Northern Territory Fisheries Harvest Strategy is a policy document that integrates the ecological, social and economic dimensions of fisheries management into a single operational framework for decision making. In its simplest form, a harvest strategy provides a framework to ensure that fishery managers, fishers and other stakeholders have a shared understanding of the objectives of using a specific resource and work together to consider and document response that will be applied to various fishery conditions (desirable and undesirable) before they occur. This provides greater certainty and avoids ad-hoc decision making.</p> <p>t) Harvest strategies are considered to represent a best-practice approach to operational fisheries management and they have been widely adopted nationally and internationally. Harvest strategies identify clear objectives of how a given fishery resource is to be used to optimise benefit. They put in place measurable indicators of performance to</p>
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		<p>ensure the fishery moves towards meeting the objectives and specific management actions that will be implemented if reference points are met to ensure that the fishery stays on track.</p> <ul style="list-style-type: none"> u) The adoption of a consistent approach to the development of a harvest strategy is expected to lead to better managed fisheries and encourage responsible fishing, as decisions on harvest levels are forecast and will be made in a more transparent, predictable and timely manner. Harvest strategies will also provide adaptability to social, economic and ecological change and create a level of transparency and reporting that will foster greater community confidence in the way fisheries are managed. v) In carrying out the objectives of the Fisheries Act and the Harvest Strategy, it is critical that the impact of modified access is understood as it relates to overall management of fisheries as a natural resource; w) A number of pre-requisites exist for the development and management of aquatic resources. The Harvest Strategy names the following as a pre-requisite for effectively managed fisheries: <ul style="list-style-type: none"> 1. <i>A fishery specific management framework that contains:</i> <ul style="list-style-type: none"> 1.1. <i>Long term conceptual objectives including ecological, and where appropriate, economic, social and customary objectives that define how the fishery is carried out to the benefit of the community; and</i> 1.2. Resource access and allocation arrangements between sectors to maximise the benefit of resources shared among all users (commercial, recreational, customary and fishing tourism). 2. <i>An ESD risk assessment to identify and prioritise the full suite of ecological, economic, social and customary issues in the fishery.</i> x) Notwithstanding that the <i>Fisheries Act</i> and the Harvest Strategy would continue to apply regardless of tenure, the granting of 'Beds and Banks' claims on a wide scale amounts (in a cumulative sense) to an additional management regime over Territory waterways - an access regime notionally founded upon either permit-based access or agreements for commercial activity under Section 19 of the <i>Aboriginal Land Rights Act 1976</i>. y) Historically, impediment to or obstruction towards an aquatic resource (whether through regulatory, access or environmental factors) has served to displace fishing effort, rather than remove it. This displacement has the more than likely effect of concentrating
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		<p>commercial fishing effort. It also remains at odds with the overall aims and goals of the Fisheries Act and the Harvest Strategy, which aims to promote and enhance informed, evidence-based fisheries management decisions.</p> <p>z) In the McArthur River Region Land Claim (184) Report of March 2002 the then ALC, Justice Olney, at paragraph 169, makes a strong comment on the need to treat river and sea access and the issues arising there from on a global basis:</p> <p><i>"It is likely that the pending claims identified in in this statement will give rise to similar, if not identical, issues as have been raised in previous Land Claims in relation to access to rivers and the sea, and to the management of both marine resources and the coastal ecosystem. The evidence is very strongly against dealing with these issues on a purely local, rather than a regional or even a Territory-wide basis. It would seem that a final resolution of these claims may be dependent upon the resolution of outstanding legal questions concerning the rights which attach to Aboriginal ownership of tidal rivers and the bed of the intertidal zone and also the larger question of whether the seabed beyond the low water mark is susceptible to claim under the Land Rights Act. Ultimately legislative action on the part of both the Commonwealth and the Northern Territory may be required to achieve an acceptable result."</i>(Emphasis added).</p> <p>aa) In the Lower Roper River Land Claim (70)Report of 7 March 2003 Justice Olney, at paragraph 112, returned to this theme and commented:</p> <p><i>There have been a number of land claim reports in recent years in which recommendations for the granting of title have been made in respect of areas of the inter-tidal zone and tidal rivers in the Gulf region. Most, if not all, of those reports have been referred to above. In each, one of the concerns expressed is that if by reason of a grant of title access to waters of the ocean and rivers by commercial and/or recreational fishers is prohibited or restricted, there is likely to be a corresponding increase in fishing effort in other areas. This reasoning has not been challenged. In these circumstances it would seem logical that the recommendation in this report should not be considered in isolation from those contained in the other reports in question but rather, a regional, if not Territory wide, approach should be adopted in considering</i></p>
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		<p><i>whether, and to what extent, the recommendations should be given effect to.”(Emphasis added).</i></p> <p>bb) Of further significance to whole-of-fisheries management is that displaced fishing effort may very well be displaced to further areas where access may be conditional or denied altogether – creating, in effect, regional level disruption of fisheries management (i.e. the Harvest Strategy) rather than localised.</p> <p><u>Enforcement of catch limits</u></p> <p>cc) The Northern Territory has strict possession limits and gear restrictions in place for recreational fishers and a range of effort and gear restrictions in place for the commercial fishery. The numbers of commercial fishers and fishing tour operators is controlled via the issue of licences to undertake that activity. Compliance involves two key measures; education and enforcement. Education measures include brochures, signage and a NT fishing application that allow smart phone users to understand and be aware of the various fishing rules in place including the ban on the take of protected species.</p>
6.	<p>In the hearing before Commissioner Olney, the Department of Mines and Energy submitted that:</p> <p>a) any restriction to access or use of the port facility at Bing Bong would negatively impact on the current mining operations in the area but also on the future development of the region, as the port facility operated as the coastal port access.</p> <p>b) the McArthur River Basin was one of the most highly prospective areas in the Northern Territory for base metals, was one of the most intensively “pegged” regions in the Northern Territory and that the basin was an important livestock growing region and the Gulf of Carpentaria an important region for fisheries. They submitted that coastal port access was therefore central to the operation and development of all these activities.</p>	<p>The DPIR administers and regulates petroleum exploration, production and transportation (via pipeline) activities in the Northern Territory onshore and to 3 nautical mile limit (3nM).</p> <p>DPIR (Mines and Energy) advise as to the following.</p> <p><u>Part 1: Minerals Tenure</u></p> <p><u>Land Claim 184:</u></p> <p>a. Mineral tenure under the <i>Mineral Titles Act</i> (NT) can be grated to the edge of rivers i.e. to high water mark and may extend to low water mark in relation to foreshore areas.</p> <p>b. The following mineral titles border and/or the claim area in LC 184 and are located on McArthur River Station (NT Portion 4319):</p> <p>c. Mineral Lease Northern (MLN) 1126: Mount Isa Mines Ltd (operated by McArthur River Mining Pty Ltd);</p> <p>d. Mineral Lease (ML) 29628 – Britmar (Aust) Pty Ltd;</p> <p>e. Access Authority (AA) 29692 – Mount Isa Mines Ltd;</p> <p>f. ML 29881 (application) – Mt Isa Mines Ltd.</p>

		<p>g. A map depicting the location of these mineral tenures is annexed as Attachment 1.</p> <p>h. Mining operations over the affected areas on McArthur River Station involve:</p> <p>i. The Bing Bong Port Facility is still being used by MRM Pty Ltd (MRM) for the McArthur River mine project. Restrictions or denial of access and use of the intertidal zone adjacent to McArthur River Station may negatively impact MRMs current and future mining operations at the mine.</p> <p>j. The Bing Bong Port facility is proposed for use by Britmar (Aust) Pty Ltd for the Nathan River Resources Project. Restrictions and or denial of access and use of the intertidal zone adjacent to McArthur River Station may negatively impact Britmar’s proposed future mining operations.</p> <p>k. MRMs Bing Bong Dredge Spoil Emplacement Facility is located directly adjacent to MLN 1126 on McArthur River Station. This facility is not situated on a mineral title granted under the <i>Mineral Titles Act</i> (NT) (MTA); however, MRM previously operated this facility under the “non-pastoral use approval NP033” granted under the <i>Pastoral Land Act</i> (NT). This approval has expired and there is no current permit granting non-pastoral use over the pastoral lease; however, MRM have applied for a Mineral Lease over the Bing Bong Dredge Spoil Emplacement Area under the MTA (applied for on 14 March 2013). This mineral lease is still under application. Restrictions or denial of access and use of the affected intertidal zone area may negatively impact MRMs ability to undertake dredging activities at the Bing Bong Port Facility.</p> <p><u>Land Claim 185.</u></p> <p>l. There are no mineral titles over or bordering the claim area in LC 185.</p> <p><u>Part 2: Energy Tenure</u></p> <p>a. The relevant Acts, regulations and schedules in relation to energy/petroleum tenure are the:</p> <ul style="list-style-type: none"> • <i>Petroleum Act</i> • Petroleum (Environment) Regulations
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- Schedule of Onshore Petroleum Exploration and Production Requirements 2016
- Petroleum Regulations
- *Petroleum (Submerged Lands) Act*
- Petroleum (Submerged Lands) Regulations
- *Petroleum (Prospecting and Mining) Act*
- *Energy Pipeline Act*
- Energy Pipelines Regulations

General comments as to detriment and land usage in the event of the grant of Aboriginal land

Access Negotiations

- b. Before grant of a petroleum permit, the DPIR must have evidence that the applicant and either the registered native title parties or the traditional owners of any ALRA land, (whichever is applicable) have reached formal agreement between them.
- c. The DPIR is not privy to these agreements, but understands that they can deal with environmental and cultural matters and how activities are conducted. This could include activities like construction of roads and tracks, creek crossings, development of processing facilities and gathering pipelines, transport a petroleum resource via pipeline or to conduct environmental studies, including sampling and geophysical surveys.

Environmental Regulation

- d. The *Petroleum Act* requires that the holder of a granted EP must carry out works in such a way as to cause as little disturbance to the environment as practicable. Additionally, exploration activity is subject to the requirements of the Petroleum (Environment) Regulations (PER), the object of which is to ensure that regulated activities are carried out in a manner:

		<ul style="list-style-type: none"> (i) consistent with the principles of ecologically sustainable development by which the environmental impacts and environmental risks of the activities will be reduced to a level that is as low as reasonably practicable; and (ii) that is acceptable. <p>e. All exploration activities must have an environment management plan approved under the PER before activity be undertaken. For those reasons, DPIR does not generally approve drilling programs within 100 metres of a river or inland water body.</p> <p>Petroleum Exploration and Development Activities</p> <ul style="list-style-type: none"> f. Among other things petroleum activities consist of construction of roads, tracks camps and drilling sites, creek crossings, ground geophysical surveys, airborne surveys and the conduct environmental and geological studies, including sampling. If substantial hydrocarbons are discovered development could include construction of processing facilities and gathering pipelines and transport of petroleum resources via a pipeline. While there may be opportunities to connect to the Amadeus or the (under construction) Northern Gas Pipeline a company would look at all development options to select the most viable, which could include to an offshore facility like a Floating LNG processing facility or a condensate export facility such as is offshore from Wadeye. g. As noted in a grant, DPIR does not generally approve drilling programs within 100 metres of a river or inland water body, therefore, grant of Aboriginal Land over the areas claimed may not directly affect tenement holders' exploratory drilling. h. Applicants for petroleum interests or pipeline licences may be affected by the grant of Aboriginal land because they would need to secure an agreement under Part 4 or s19 ALRA along with any other procedural requirements in order for the interest to be validly granted after the area becomes Aboriginal land. i. Petroleum interest holders may need to use the claim areas to access or transport a petroleum resource via pipeline, construct petroleum infrastructure or to conduct environmental and geological studies, including sampling and geophysical surveys. The effect of the grant of Aboriginal land on those interest holders would depend on how the interest was categorised under the ALRA (e.g. as an exploration licence, exploration retention licence or mining interest). A process to renew an
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		<p>exploration licence or obtain a mining interest will require compliance with Part 4 ALRA. Where seas adjacent to Aboriginal land have been closed under to 2 kilometres from the low water mark under the <i>Aboriginal Land Act (NT)</i>, interest holders may need to obtain permits to access those areas.</p> <p>j. Pipeline licences under the <i>Energy Pipelines Act (NT)</i> confer certain rights to construct, operate and maintain a pipeline. However, to the extent the exercise of those rights would interfere with the rights of an underlying interest holder (e.g. owner of an estate in fee simple), the licence holder will need to negotiate an easement, lease, licence or other right in order to lawfully exercise their rights under the pipeline licence. Where a pipeline licence crosses unalienated Crown land that is not subject of any inconsistent interests (e.g. a reservation), there may have been no need to obtain an easement, licence, lease etc. from the Crown. If the land claimed is granted as Aboriginal land, a pipeline licensee under the <i>Energy Pipelines Act (NT)</i> will need an appropriate easement, lease or licence from the relevant Land Trust to exercise its rights under the pipeline licence.</p> <p>k. Pipeline interest holders are obliged to maintain pipelines in good order. In general, they may need to access pipelines for care and maintenance purposes. In particular, for pipelines in the intertidal zone, access will be required after significant storm events where sand waves or other seabed changes may have occurred, which could leave parts of the pipelines suspended and under considerable structural stress. Where seas adjacent to Aboriginal land have been closed under the <i>Aboriginal Land Act (NT)</i>, pipeline interest holders may need to obtain permits to access those areas.</p> <p>l. In relation to the Claim Areas noted below and surrounds, there is no certainty that a future access agreement would be reached for other petroleum activities in which case undertaking activities on granted titles that may require access to or through the claim areas cannot be relied on.</p> <p>m. Failure to reach agreement may result in a strong risk that existing and proposed patterns of land usage associated with petroleum exploration and production could be detrimentally impacted if access is withdrawn or restricted.</p> <p>n. Even if an agreement can be reached, it would likely create additional costs to petroleum explorers.</p>
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		<p>Petroleum Interests over and adjacent to the Claim Area</p> <ul style="list-style-type: none"> o. There are granted titles and applications that fall on native title affected land which are also partly within the claim areas. p. The area is considered prospective for oil and gas. The Glyde 1 (ST1) gas discovery made by Armour Energy in 2012 is located in one of its permits to the south of the claim areas in LC 178, 184 and 185 approximately 120 of km from the coast. Glyde ST1 lateral well flowed 3.33 million standard cubic feet per day. Based on the third party independent report, Coxco Dolomite reservoir within the Glyde 1 target area (1440 Acres) is estimated to hold 6 billion standard cubic feet (6 Bscf) 2C contingent resources. Coxco Dolomite is classified as a conventional reservoir. <p><u>Land Claim 184</u></p> <ul style="list-style-type: none"> q. Granted Exploration Permit EP 190 was granted under the provisions of the NTA to Armour Energy on 11 December 2012 with current expiry date of 10 December 2017. An application for suspension and extension is under assessment. EP 190 covers the entirety of the coastal and landward portions of LC 184 (see maps at Attachment 2 and enlargement at Attachment 3). r. Petroleum Exploration Licence Application EP 193 over Aboriginal Land and was granted Consent to Negotiate pursuant to s41(1) <i>Aboriginal Land Rights (Northern Territory) Act (Cth)</i> (ALRA) on 22 February 2011. The application was vetoed pursuant to s48 ALRA on 11 December 2014 with the moratorium ending on 10 December 2019. This application abuts the western termination of the claim area: see map at Attachment 3. s. Petroleum Exploration Licence Application for EP173 was submitted by Armour Energy Limited on 24 December 2009. The application is situated over NT Portion 3975 held by the Garawa Aboriginal Land Trust and Consent to Negotiate was issued on 28 May 2010. Armour received an extension to the consent to negotiate period which is now due to end on 31 October 2018. This application overlaps the south western corner of the claim area: see map at Attachment 4. t. Armour Energy Limited has made a gas discovery over land including McArthur River Station on the title area comprising EP 171 located to the south of the land claim area close to the boundary of EP 190.
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- u. The above petroleum tenures are therefore likely to be treated by Armour Energy Limited as a "Project". However, until further exploration activity is undertaken it is difficult to determine where the company may wish to construct infrastructure for the Project and whether it will impact on the claimed area. If there is success in locating substantial petroleum resources and development was to proceed, then there are currently 2 opportunities to connect to existing pipeline infrastructure located some distance from Armour's holdings namely the Amadeus, approximately 315km to the West and the yet to be commissioned Northern Gas pipeline, approximately 330 km to the South running close to the Barkly Highway. While there may be opportunities to connect to the Amadeus or the (under construction) Northern Gas Pipeline a company would look at all development options to select the most viable, which could include to an offshore facility like a Floating LNG processing facility or a condensate export facility such as is offshore from Wadeye.
- v. Proposed patterns of land usage may be impacted in the event of a grant of the claimed land in the event that the company was unable to secure the most practical location for the processing plant and pipeline infrastructure required for the efficiency of the Project. It should be noted that all existing Petroleum Exploration Licence Applications falling within the claimed area, for which Armour Energy is also the Applicant, also traverse adjoining Aboriginal land.

Land Claim 185

- w. Exploration Permit EP 190 was granted subsequent to compliance with the NTA to Armour Energy on 11 December 2012, with current expiry date of 10 December 2017. An application for suspension and extension is under assessment. EP 190 covers the entirety of the coastal portion of LC 185 and a portion of the claim landward: see maps at **Attachment 2 and Attachment 4**.
- x. Granted Exploration Permit EP 174 was granted subsequent to compliance with the NTA to Armour Energy on 11 December 2012, with current expiry date of 10 December 2017. An application for suspension and extension is under assessment. EP 174 covers a small portion of LC 185: see map at **Attachment 4**. The comments directly above at paragraph (u) and (v) apply with equal force in relation to the petroleum tenures the subject of this land claim.

7.	N/A	<ul style="list-style-type: none"> The Department of Trade, Business and Innovation advise that they have no assets, infrastructure or activities within the claimed areas. They have expressed concern that public rights may be affected in relation to fishing, camping and access to the rivers and intertidal zones the subject of LC 184 and 185. Further they have expressed concerns regarding any detrimental effect on pastoral operations in the area that may arise in the event of a grant of the claimed land.
8.	CONCLUSION	<p>a) It is the submission of the Northern Territory that the comment function of the Commissioner under section 50 (3) (b) and (c) ALRA requires, where appropriate, the Commissioner to take a broad view that the effect of acceding to a claim may have. As noted at item I, Part I, paragraph (bb)-(cc), we adopt and endorse the comment of the former Commissioner Olney J in Report No. 62 regarding the McArthur River Region Land Claim No. 184 at paragraph 169 and at paragraph 112 of the Commissioner's report No.65 regarding the Lower Roper River Land Claim No. 70 and go further.</p> <p>b) Your Honour observed in discussion in Legune Area LC 188 and Gregory NP/ Victoria River LC 167 (transcript of land claim call over on 2201/7 at p. 822-27) that "... it's not just enough to say, well, we won't be able to get water from the river. It's a question of whether there's any other water or anywhere else, or whether there's other means of access, or whether there's difficulties which are being experienced. .." By parity of reasoning it is not enough to say (indeed it is a nonsense to say) that recommending a grant that if acceded to would prevent entry on or fishing of these (claimed) waters is of no consequence because there are other waters that might be fished or entered on when it is known that every area of water that is presented as an alternative is claimed or recommended for grant. The evidence regarding cumulative detriment presented in the inquiry for the Fitzmaurice River Region Land Claim 189 and Legune Area Land Claim No.188/167 of Mr Sarib (exhibit NT7 LC 189; NT18 in LC 1881/67) and Mr Ian Cumow (Exhibit NT9 in LC 189 being exhibit NT9 in LC 188) and the respective oral evidence given explain this issue. Thus as one by one Claims are heard and recommended there is a cumulative effect such that the throw away idea that people can fish or otherwise access and/or enjoy the waterways somewhere else becomes unrealistic.</p>

		<p>c) The detriment is not just one more River or inter-tidal zone area. The pattern of land usage ceases to be achievable. Unless the Minister is assisted by a comment that recognises this reality he or she cannot understand the global effect of acceding to each claim. It may be that the Minister may wish to accede to a claim regardless of the detriment or effect on existing or proposed patterns of land use but he or she needs to know where this is heading. Thus we submit cumulative detriment is a valid and proper matter for comment.</p> <p>d) Finally, please note that the Northern Territory may seek leave to provide further detriment submissions where required arising from any detriment submissions provided by other parties the subject of this detriment review.</p>

TABLE 2

Garrwa (Wearyan and Robinson Rivers beds and banks) LC 178: Report No. 64 of the Aboriginal Land Commissioner		
No.	Olney J detriment findings and any additional detriment per ALC letter of 15.12.17	Additional/new detriment information
1.	<p>Parks and Wildlife Commission of the Northern Territory (PWCNT)</p> <ul style="list-style-type: none"> a) In event of a grant of title to claimed land, environmental management and protection practices may be adversely affected. b) Claim area contained several species of flora and fauna considered to be of conservation significance including tropical/subtropical plant Cycad (<i>Cyas angulate</i>), fresh and saltwater crocodiles and Gouldian Finch. 	<p>Part 1: The PWCNT, which is now part of Department of Tourism and Culture (DTC), advise:</p> <ul style="list-style-type: none"> a) It is likely that in 2002/2003 when Report No.64 was published, the wildlife science expertise resided in the Parks and Wildlife Commission of the Northern Territory. This function now resides with the Flora and Fauna division of the Department of Environment and Natural Resources. The area under claim was not under active conservation management of the Commission in 2002 and is not under any active conservation management in 2018. The detriment expressed at the time was that environmental management may have been adversely affected if the claim proceeded to grant. The view in the DTC in 2018 is that any risk to conservation values of the area by virtue of land grant would be low but this should be confirmed with Department of Environment and Natural Resources. <p>Part 2: Department of Environment and Natural Resources (DENR) advise:</p> <ul style="list-style-type: none"> b) The Environment Division has no specific or current future interest in the areas the subject of this claim, and is not aware of any private interests that would be affected by a grant of Aboriginal land beyond those already identified by NT Agencies. Application of relevant NT legislation regarding the environment is not expected to be affected by the grant of the claim area as Aboriginal land. <p>Part 3: <u>Detriment/proposed patterns of land usage comments from DENR:</u></p>

		<p>c) Adjacent pastoral lease land holders to LC 178 areas as held by Aboriginal people: Wearyan and Robinson Rivers:</p> <ul style="list-style-type: none"> (i) NTP 814 — Spring Creek Station Pastoral Lease No. 687 — Mawson family: property adjacent to eastern bank of the Wearyan River; (ii) NTP 1351— Seven Emu Station, Perpetual Pastoral Lease No. 1215 (Francis Thomas Shadforth — Garrawa family): adjacent to western bank of Robinson River <p><u>Seven Emu</u></p> <ul style="list-style-type: none"> d) On Seven Emu, tourism camp spots are located along Robinson River and Shark Creek giving access to prime fishing spots. e) Seven Emu operates a minor tourism business (non-pastoral use — camping/tours) on the pastoral lease. f) Future diversification activities may require the use of the bed and banks of the river. Such uses may be tourism, fishing tours, agriculture (taking water from the river for irrigation) etc. The non-pastoral use provisions under the Pastoral Land Act have operated since 1992 and non-pastoral activities contribute economic returns to the NT economy. g) The Objects of the <i>Pastoral Land Act</i> require a pastoral lessee to prevent or minimize degradation of or other damage to the land and its native flora and fauna. To meet these requirements, the lessee must control feral animals and weeds including those on the beds and banks of any waterways as there are often high weed incursions within those waterways. Access must be allowed in order to control any incursions and prevent widespread weed problems throughout the lease and any neighbouring land. h) The lessee's, their staff and visitors, may access the waterways, including the beds and banks of the rivers/coastline for camping and fishing and other recreational purposes. This is common practice. Under the <i>Pastoral Land Act</i>, Part 6 section 79, the general public also has the right to access waterways. i) The lessee has the right to graze and water cattle on his land adjoining waterways pursuant to the <i>Water Act</i> (NT). j) The lessee may take water for domestic purposes, drinking water for grazing stock on the land and may wish to install pipes or pumps in the claim area for accessing the water supply in the future. Under the <i>Water</i>
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		<p><i>Act</i> (section 13) the pastoral lessee is entitled to have their cattle access the banks of a boundary waterway. This provision has been in effect since 1992. Seven Emu has paddocks which adjoin the Robinson River.</p> <p>k) Mr Shadforth is an Aboriginal man with traditional interests in the claim region and/or claim area. At the time of hearing of LC 178 he wrote to the then Commissioner to advise that he did not wish any claims on Seven Emu station and would agree to access by other Aboriginal persons subject to prior notice. This statement was also presented in the Seven Emu Region LC 186 inquiry. The former Commissioner commented on the detriment that may be suffered to Mr Shadforth and his family in the context of detriment to other Aboriginals in the event of a grant of the claimed land in report no. 64 regarding LC 178: refer report at paragraphs 60-66.</p> <p>l) In November 2015 the Federal Court made a native title consent determination over Seven Emu station recognising the existence of exclusive native title rights and interests on the basis of the application of s47 NTA to the pastoral lease. Mr Shadforth and his family agreed to the claim under s47 NTA and they were included as part of the native title holding group in relation to the determination over the pastoral lease.</p> <p>m) Accordingly Mr Shadforth and his family may have traditional interests in the claim area and may therefore no longer hold the concerns expressed during the original land claim inquiry. It is therefore likely that Mr Shadforth and his family are part of the traditional owner group for all or part of the Robinson River the subject of this claim. If this is the case, then any use of the waterway (including the bed and or banks) for pastoral, tourism, domestic or other purposes by Mr Shadforth or his family is unlikely to be objected to by the other traditional owners and limited or no detriment is likely to result. If however, some other members of the traditional owner group are responsible for part of the waterway with the result that restrictions or denial of access is imposed to the area then this may impede the pastoralists' future to generate an alternative source of income.</p> <p>n) If however, the pastoral lease were to be sold to a party not affiliated with the traditional owners then it may impact proposed patterns of land usage in relation to the claim region if any restrictions or denial of access to the waterway were to result.</p>
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Spring Creek Station

- o) Future diversification activities may require the use of the bed and banks of the river. Such uses may be tourism, fishing tours, agriculture (taking water from the river for irrigation) etc. The non-pastoral use provisions under the *Pastoral Land Act* have operated since 1992 and non-pastoral activities contribute economic returns to the NT economy.
- p) The Objects of the *Pastoral Land Act* require a pastoral lessee to prevent or minimize degradation of or other damage to the land and its native flora and fauna. To meet these requirements, the lessee must control feral animals and weeds including those on the beds and banks of any waterways as there are often high weed incursions within those waterways. Access must be allowed in order to control any incursions and prevent widespread weed problems throughout the lease and any neighbouring land.
- q) The lessee's, their staff and visitors, may access the waterways, including the beds and banks of the rivers/coastline for camping and fishing and other recreational purposes. This is common practice. Under the *Pastoral Land Act*, Part 6 section 79, the general public also has the right to access waterways.
- r) The lessee has the right to graze and water cattle on his land adjoining waterways pursuant to the *Water Act* (NT).
- s) The lessee may take water for domestic purposes, drinking water for grazing stock on the land and may wish to install pipes or pumps in the claim area for accessing the water supply in the future. Under the *Water Act* (section 13) the pastoral lessee is entitled to have their cattle access the banks of a boundary waterway. This provision has been in effect since 1992.
- t) The Mawson family are Aboriginal people likely to have traditional interests in the claim area. At the time of hearing of LC 178, members of the Mawson family asked to be removed as claimants for this land claim: refer paragraph 28, report No. 64.
- u) In paragraph 60 of Report no. 64, the former Commissioner stated that:
Each of the pastoral properties which adjoin the claimed land, namely Spring Creek Station and Seven Emu Station, is held by Aborigines. Members of the Mawson family (Spring Creek Station) have connections with the claimant groups but have opted not to be named as claimants. The evidence does not deal with the traditional connections of the Shadforth family (Seven Emu Station). It is clear from the comments which follow that each of the Mawson and Shadforth families could suffer detriment in the event of a grant of title to the claimed

land unless satisfactory and binding arrangements are put in place to guarantee their continued access to the sections of the rivers under claim for the purpose of obtaining water for domestic purposes and for stock and for fishing and other legitimate purposes in accordance with their current practices.


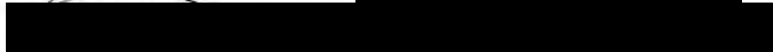
- v) In November 2015 the Federal Court made a native title consent determination over Seven Emu station recognising the existence of exclusive native title rights and interests on the basis of the application of s47 NTA to the pastoral lease. Mr Mawson and his family agreed to the claim under s47 NTA and they were included as part of the native title holding group in relation to the determination over the pastoral lease. Accordingly Mr Mawson and his family may have traditional interests in the Wearyan River claim area and may therefore no longer hold the concerns expressed during the original land claim inquiry. It is therefore likely that Mr Mawson and his family are part of the traditional owner group for all or part of the Wearyan River the subject of this claim. If this is the case, then any use of the waterway (including the bed and or banks) for pastoral, tourism, domestic or other purposes by Mr Mawson or his family is unlikely to be objected to by the other traditional owners and limited or no detriment is likely to result. If however, some other members of the traditional owner group are responsible for part of the waterway with the result that restrictions or denial of access is imposed to the area then this may impede the pastoralists future to generate an alternative source of income.
- w) If however, the pastoral lease were to be sold to a party not affiliated with the traditional owners then it may impact proposed patterns of land usage in relation to the claim region if any restrictions or denial of access to the waterway were to result.

General provisions regarding water monitoring

- x) Access to undertake water monitoring duties is provided under s20(1) and (2) of the *Water Act* (NT).
- y) The Water Resources Division of DENR advise that there are no active water monitor infrastructure in the land claim areas and no monitoring activity or studies are currently in progress within the claim areas. However, future water investigations for planning and development may necessitate access by Water Resources staff onto the claim areas for constructing and/or monitoring of relevant infrastructure. Historic sites (also known as "legacy sites" are no longer used by the Division but the infrastructure may remain in situ. It is common for the Division to re-establish historic gauging stations as new water investigations require.

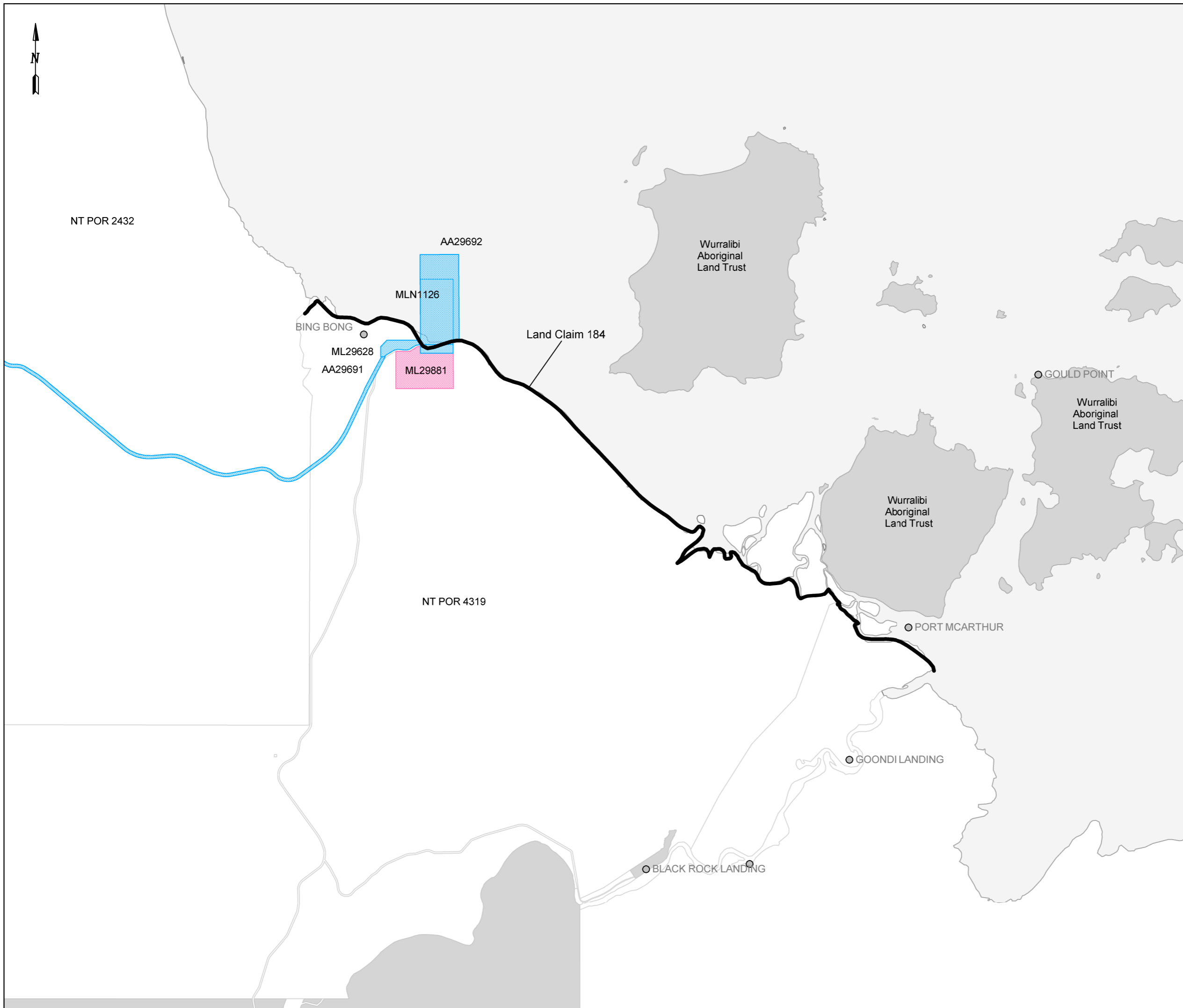
		<p>z) Data collected by gauging stations provides continuous record of river height and flow to improve the understanding of the hydrology, water quality and geomorphology of the river and key elements of water management. The replacement value of a typical gauging station is \$150,000.00.</p> <p>aa) There are no legacy sites in the LC 178 and LC 185 claim area. However, there is one legacy site G9070120 in the claim area, McArthur River, Black Rock Landing (662479E, 8239852N). This site may contain some river monitoring infrastructure.</p> <p>bb) Provided there is direct access to the rivers, extraction from the river for stock and domestic use is permitted. The extraction of water for any other purpose is not permitted without a water extraction licence.</p> <p>cc) Surface extraction water licences may be issued to specific landholders bordering a river who meet the application requirements and assessment conditions of the <i>Water Act</i>. The land holder will maintain pumping infrastructure on the river bank to access water. Staff from the Water Resources Division inspect the pumping infrastructure annually to ensure it conforms with relevant standards and to validate meter readings. SFNT has been instructed that there are no extractive water licences in the claim area.</p>
2.	<p>a. The Department of Infrastructure, Planning and Environment submitted concerns in relation to access restrictions that may be placed on the fresh water section of the Wearyan River, which was used for stock, paddocks and domestic purposes by surrounding properties.</p> <p>b. Following concerns notified by SFNT in November 2016:</p> <p>i. Future project with potential for impact: the Robinson River Construct Causeway Wollogorang Road (RFT020000); and</p> <p>ii. Access to Doolgarina Road and Seven Emu Road may be affected if title to the claim area was granted.</p>	<p>Department of Infrastructure, Planning and Logistics (DIPL) advise:</p> <p>a) Seven Emu Property Access from Manangoora intersection to Seven Emu: Rural Local Road: 100m wide road corridor: that part of the road including the causeway which crosses the Robinson River is required to be excluded from any proposed grant area of the river banks and bed to enable maintenance, upgrade, operation and detours as part of road and causeway works as required for ongoing public use of this road over which the public has a right of way.</p> <p>b) Wollogorang Road causeway over Robinson River: rural secondary road: 100, wide corridor is required to be excluded from any proposed grant of the area of the river banks and bed to enable maintenance, upgrade, operation and detours as part of road and causeway works as required for ongoing public use of this road over which the public has a right of way.</p>

<p>3.</p>	<p>The Department of Business, Industry and Resources (DBIRD) made submissions in relation to the recreational value of the claim area. Concerns were expressed regarding the public right to fish to waters within the claim area if public access was to be restricted or denied to the rivers, then increased pressure would be placed on other recreational fishing areas in then NT. The Tourist Commission also provided submission of a similar nature referring to the claim area as an NT “fishing destination”.</p>	<p>The Department of Primary Industry and Resources (DPIR) advise:</p> <p>Part 1: FISHERIES</p> <ul style="list-style-type: none"> a) These is no specific recreational fishing data for the claimed section of the rivers, however these areas provide bankside camping opportunities and areas known to be frequented by anglers during the dry season. b) Refer above re LC 184/185 Fisheries detriment comment where relevant at Table 1, item 9, paragraphs (a)-(d), (n)-(z) and (aa)-(bb). c) Significance to whole of fisheries management is that fishing effort may be displaced to areas where access may be conditional or denied altogether creating regional level disruption of fisheries management rather than localised. <p>Part 2: MINERALS AND ENERGY</p> <p>DPIR advise:</p> <p><u>Mineral titles:</u></p> <ul style="list-style-type: none"> d) There are no mineral titles over or bordering the claimed area in LC 178. <p><u>Petroleum titles</u></p> <ul style="list-style-type: none"> e) Petroleum Exploration Permit (EP) 174 was granted to Armour Energy Limited on 11 December 2012 with current expiry date of 10 December 2017. An application for suspension and extension is under assessment. EP 174 covers the western portion of Land Claim 178: see maps at Attachments 2 and 4. f) Application for EP173 was submitted by Armour Energy Limited on 24 December 2009. The application is situated over NT Portion 3975 comprising land held by the Garawa Aboriginal Land Trust. Consent to Negotiate by the Territory Minister pursuant to the <i>Petroleum Act</i> (NT) and s41(1) ALRA was issued on 28 May 2010. Armour received an extension to the consent to negotiate period which is now due to end on 31 October 2018. This application abuts the eastern bank of the claim area: see map at Attachment 5. g) The comments above at item 6, part 2, paragraphs (a)-(p) and (u) apply equally in relation to this claim.
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4.	OTHER	<p>Department of Trade, Business and Innovation (DTBI) advise:</p> <ul style="list-style-type: none"> The Department concurs with previously lodged detriment submission before the previous Commissioner regarding public rights that may be impacted in relation to fishing, camping and access to River systems, as well as concerns that pastoral operations in the area may be affected.
5.	CONCLUSION	The Territory adopts the conclusion as set out at item 9 of Table 1 set out above.
<p><u>Attachments to above Tables 1 and 2:</u> Attachment 1: Land Claim 184:Map of Mineral titles within or adjacent to claim area Attachment 2: Map of petroleum titles for land claims 178 184 and 185 Attachment 3: Land Claim 184 enlargement map depicting EP 190 and EP(A) 193 Attachment 4: Map enlargement of LC 185 depicting EP174, 190 and EP(A) 173. Attachment 5: Map of LC 178 depicting EP 174 and EP(A) 173.</p> <p>Above Tables 1 and 2 prepared by:   Kalliopi (Poppi) Gatis Senior Lawyer Solicitor for the Northern Territory Department of Attorney General and Justice Floor 1 Old Admiralty Towers 68 The Esplanade, Darwin GPO Box 1722, Darwin NT 0801</p> <p>Date: 16 March 2018</p>		

**CURRENT
MINERAL TITLES
LAND CLAIM 184**

-  Land Claim Area
-  Mineral Lease Application
-  Mineral Lease Granted
-  Access Authority Granted
-  Aboriginal Land Trust
-  Cadastre












Datum: GDA94

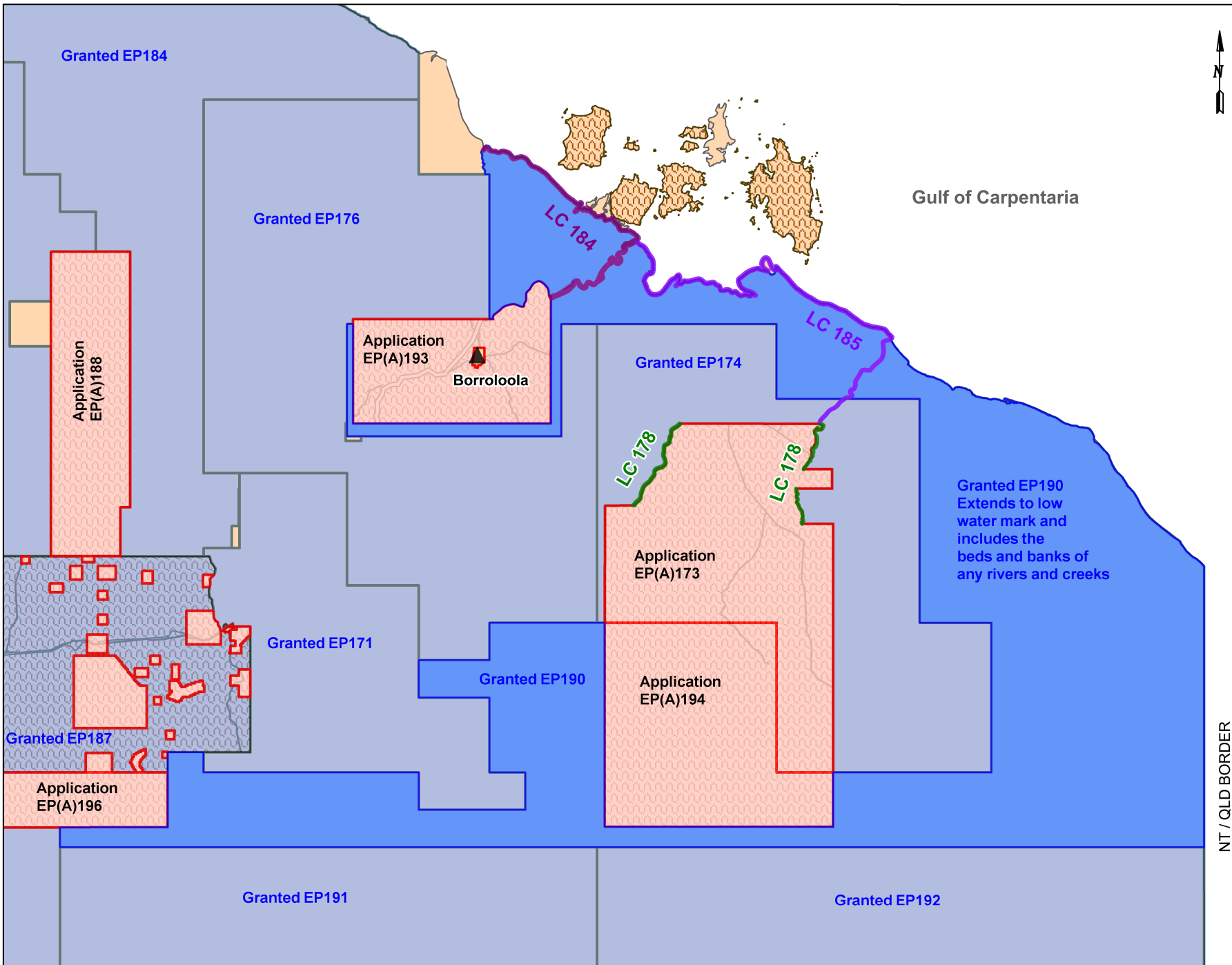


Date: 09 March 2018
Prepared By: Mineral Titles Division

NOTE TO MAP USERS: Mining and exploration tenure depicted on this map are plotted from descriptions supplied by the holders and the Northern Territory takes no responsibility as to their accuracy. Further, users should be aware that inconsistencies may occur between data on selected layers due to the origin of the data depicted.

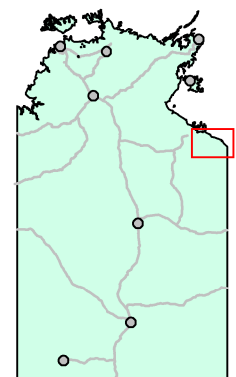
LEGEND

-  Granted Petroleum Exploration Permit EP190
-  Granted Petroleum Exploration Permit (Native Title)
-  Petroleum Exploration Permit Application
-  Land Claim (LC) 184
-  Land Claim (LC) 185
-  Land Claim (LC) 178
-  Aboriginal Land Trust
-  NT Onshore/ Boundary
-  Locality



NT / QLD BORDER

E18-035



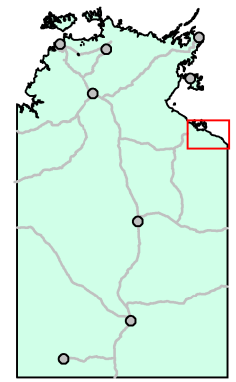
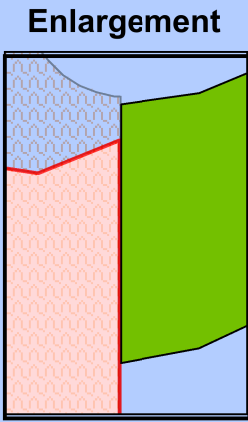
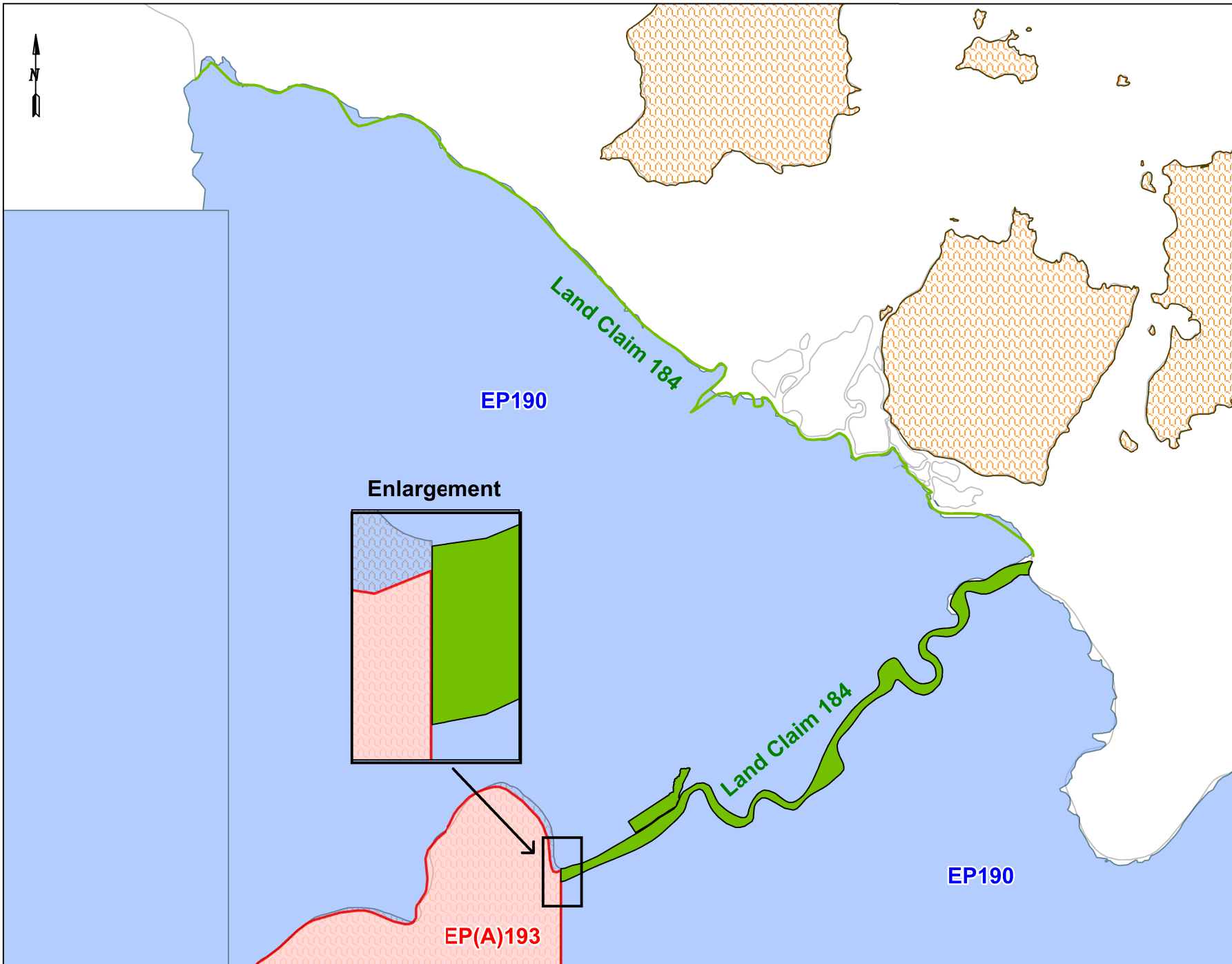
Datum: AGD 66
Date: 15 March 2018
Prepared By: Energy Titles



NOTE TO MAP USERS: Petroleum and exploration tenure depicted on this map are plotted from descriptions supplied by the holders and the Northern Territory takes no responsibility as to their accuracy. Further, users should be aware that inconsistencies may occur between data on selected layers due to the origin of the data depicted.

LEGEND

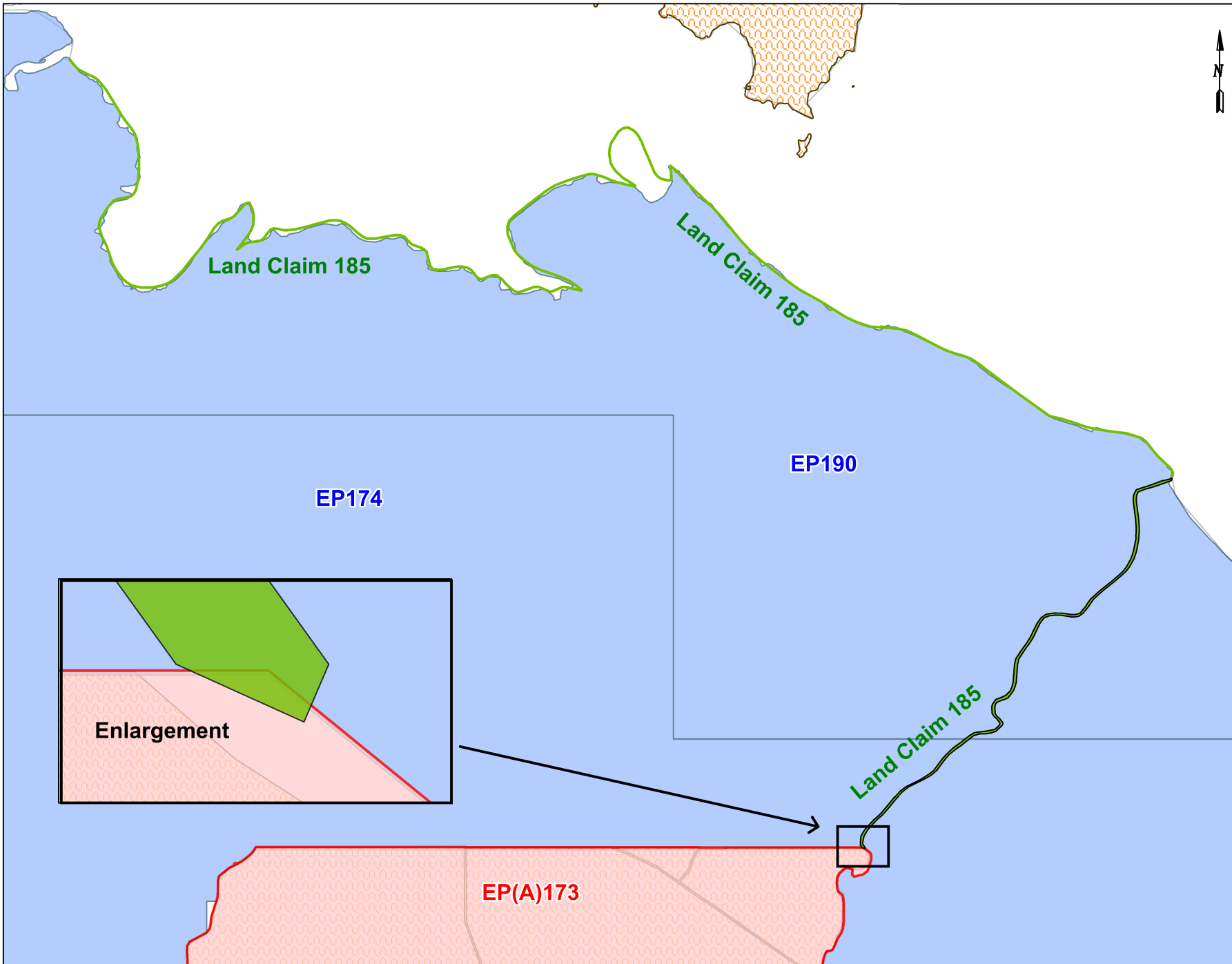
- Granted Petroleum Exploration Permit
- Petroleum Exploration Permit Application
- Land Claim
- Aboriginal Land Trust



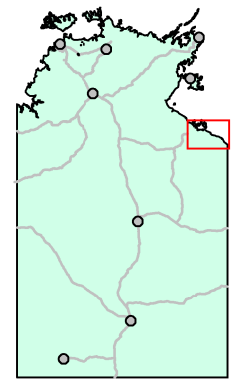
E18-032

LEGEND

- Granted Petroleum Exploration Permit
- Petroleum Exploration Permit Application
- Land Claim
- Aboriginal Land Trust



E18-033



NOTE TO MAP USERS: Petroleum and exploration tenure depicted on this map are plotted from descriptions supplied by the holders and the Northern Territory takes no responsibility as to their accuracy. Further, users should be aware that inconsistencies may occur between data on selected layers due to the origin of the data depicted.

Datum: AGD 66
Date: 13 March 2018
Prepared By: Energy Titles

Aboriginal Land Rights (Northern Territory) Act

Review of Detriment Issues

Aboriginal land claims recommended for grant but not yet finalised:

- 1. Garrwa (Wearyan and Robinson River Beds and Banks) Land Claim No 178 (Report No. 64)**
- 2. McArthur River Region Land Claim No 184 and part Manangoora Region Land Claim No 185 (Report No. 62)**
- 3. Seven Emu Region Land Claim No 186; Wollogorang Area II Land Claim No 187 and part of Manangoora Region Land Claim No 185 (Report No. 66)**

Submissions of the Northern Territory in Reply

9 August 2018

1. The Aboriginal Land Commissioner (“ALC”) invited the Northern Territory (“NTA”) to participate in the review of detriment issues identified in the following land claims (“Land Claims”) being conducted by the ALC under Terms of Reference issued by the Federal Minister pursuant to section 50(1)(d) of the *Aboriginal Land Rights (Northern Territory) Act* (Cth) (“ALRA”):
 - 1.1 Garrwa (Wearyan and Robinson River Beds and Banks) Land Claim No 178 (Report No. 64), McArthur River Region Land Claim No 184 and part Manangoora Region Land Claim No 185 (Report No. 62) by letter dated 15 December 2017;
 - 1.2 Seven Emu Region Land Claim No 186, Wollogorang Area II Land Claim No 187 and part of Manangoora Region Land Claim No 185 (Report No. 66) by letter dated 22 March 2018.
2. The NTA has filed the following documents:
 - 2.1 16 March 2018, the NTA filed a document entitled “Detriment Review: Garrwa (Wearyan and Robinson Rivers Beds and Banks) Land Claim 178; McArthur River Region Land Claim No. 184 and Part Manangoora Region Land Claim No. 185 – Updated Detriment and Proposed Patterns of Land Usage Information on behalf of the Northern Territory of Australia for consideration of the Aboriginal Land Commissioner”;

- 2.2 4 April 2018, the NTA filed a document entitled “Detriment Review: Seven Emu Region Land Claim No. 186, Wollongorang Region Land Claim No. 187 and Part Manangoora Region Land Claim No. 185 – Report No. 66 – Updated Detriment and Proposed Patterns of Land Usage Information on behalf of the Northern Territory of Australia for consideration of the Aboriginal Land Commissioner”
(together referred to as “the first NTA Submissions”).
3. On 16 July 2018, Mr David Avery as Solicitor for the Claimants in the Land Claims filed a document entitled “Review of Detriment – Aboriginal land claims recommended for grant but not yet finalised” (“the Claimants’ Submissions”). In his covering letter Mr Avery, inter alia, notes “We are meeting this week with claimants for the Seven Emu, Robinson River and Wollongorang areas, and depending on the result of those meetings may wish to provide a modest supplement to these submissions.” To date, we have not received any supplementary submissions.
4. The ALC has requested the NTA provide a Reply to the Claimants’ Submissions by 9 August 2018. As noted above, the Claimants’ Submissions are filed on behalf of the claimants in the Land Claim (rather than the NLC) and the Submissions of the NTA in Reply are made on that basis.
5. The Submissions of the NTA in Reply below address specific numbered paragraphs of the Claimants’ Submissions. Where a specific paragraph of the Claimants’ Submissions is not addressed it is either on the basis that the respective paragraph relates to another party or the NTA has nothing further to add from what was contained within the first NTA Submissions.

NTA SUBMISSIONS IN REPLY RESPONDING TO NUMBERED PARAGRAPHS OF THE CLAIMANTS’ SUBMISSIONS

The following numbering refers to the paragraph number in the Claimants’ Submissions.

Agreement making

- 2-10. The NTA has demonstrated goodwill in the negotiations of existing agreements and will endeavor to participate in good faith negotiations that would address the claimed detriment. The provision of detriment submissions in respect of the potential grant of a claim area by a party is not indicative that the party is unwilling to participate in good faith negotiations.

Graeme Neate in his text, *Aboriginal Land Rights Law in the Northern Territory* © 1989, published by Alternative Publishing Co-operative Ltd (APCOL), describes access issues as they arose in the Daly River Malak Malak Land Claim No. 7.

At page 340, he stated:

“In one case, for example, counsel for the claimants assured the Commissioner that the interests of land-holders in gaining access to a river whose bed and banks had been claimed would be accommodated. He submitted that it was only the machinery, rather than the principle, that needed to be identified. The Commissioner took this to be an acknowledgement by the claimants that the Minister would be justified in deferring a grant of the land recommended until rights of access to the river had been satisfactorily resolved. It was a matter for the Minister to consider, if possible in light of an agreed approach by all concerned including the Government of the Northern Territory.” 275 [Footnote 275 refers to Daly River Malak Malak Land Claim No. 7 Report at paragraph 210]

In addressing the Claimants’ Submissions at paragraphs 2 to 10 generally, and in respect of considering the prospect of an agreement particularly, the NTA further submits as follows:

Section 50(3)(b) of the ALRA provides that in making a report in connexion with a traditional land claim a Commissioner shall comment on the detriment to persons or communities including other Aboriginal groups that **might result** if the claim were acceded to either in whole or in part. The word ‘might’ suggests that the Commissioner should consider the detriment evidence where there are uncertainties as to whether or not agreements will be reached to mitigate the detriment.

In Yutpundji-Djindiwirritj (Roper Bar) Land Claim No. 36, the prospect of an agreement was sufficient to mitigate detriment. However, there was greater certainty that permission would be given. The Commissioner stated at paragraph 184:

“Counsel for the claimants suggested that if the land became Aboriginal land and Mr Fryer wished to make use of the stock route, he should seek permission from the traditional owners on the basis that Aboriginals assist him to guide the cattle past sites of significance. He was instructed that such permission would be given (transcript, pp. 675, 676). No formal undertaking to this effect was offered. While those statements suggest that Mr Fryer would not necessarily suffer detriment if a grant is made to a Land Trust, it is undesirable that the matter be left in too nebulous a state. Mr Riley submitted on behalf of Mr Fryer that if the right to use the stock route cannot be protected that land ought to be excised from any grant. If, contemporaneously with a grant, a satisfactory agreement can be made for the use of the stock route, the drastic step of excluding land on which are many places of significance to the claimant (including most of Milwarapara-Yutpundji estate in the claim area and the Badawarrka outstation) can be avoided. Such an agreement would need to protect the position not

only of Mr Fryer but of his successors in title. As no representations were made on behalf of St Vidgeon or Roper Valley stations, I cannot make a comparable comment in regard to them.”

Likewise in Palm Valley Land Claim, the parties expressed confidence in the likelihood of reaching an agreement (see paragraph 6.4.9 of the Palm Valley Land Claim Report No. 57).

In both the Warlmanpa (Muckaty Pastoral Lease) Land Claim Report No. 51 and the Elsey Land Claim Report No. 52, Commissioner Gray stated that:

“the far more likely prospect is that agreement for a lease of the pipeline easement would be reached and the detriment suffered would be limited to the ... amounts payable under the lease”.

The Commissioner referred to other agreements reached between NT Gas Pty Ltd and a number of Aboriginal land trusts. The claimants made it clear that they were amenable to entering into an agreement for a lease of the pipeline easement, to enable the continued use and maintenance of the pipeline. By contrast, in Warlmanpa (Muckaty Pastoral Lease) Land Claim and Elsey Land Claim, there were existing leases in place that could be used as precedent and the claimants showed interest to enable continual use and maintenance of the pipelines. This would suggest that agreement was more likely to be reached.

With respect to the Land Claims presently under review, however, far greater uncertainty presently exists which, the NTA submits, should be commented on accordingly.

In Bilinara (Coolibah-Wave Hill Stock Routes) Land Claim Report No. 35, Commissioner Olney stated the following:

“[10.2.6] The best that can be said on the available information is that if the land on which the present Pigeon Hole outstation is built becomes Aboriginal land, VRDL will suffer detriment to the extent that expense is involved “in either negotiating an acceptable agreement for the continued use and occupation of the outstation or the cost of relocation. There is no reason to think that the present management of VRDL will not be able to reach agreement with the traditional owners. The same could not be said with any confidence with regard to the previous management of the company...”

[10.2.7] Difficulties of access will arise if no agreement is made or agreement reached with the relevant land council on behalf of the traditional owners... There is no reason to believe that a reasonable agreement about use and access could not be reached. In the event of

such an agreement, VRDL would suffer detriment to the extent of any rental it agreed to pay pursuant to the agreement and to the extent that it may be inconvenienced if access is denied to certain specific areas of particular spiritual sensitivity to the traditional owners.”

The NTA submits, with respect, that the passage in bold quoted above is the issue in a nutshell and should appropriately form part of any detriment comments in this regard.

It is also implicit in the above quoted passages that the likelihood of agreement should be assessed on a case by case basis.

In Daly River (Malak Malak) Land Claim No. 7, the Commissioner Toohey, stated as follows:

“[342] If Aboriginal owners of the land were interested in or involved in that type of project any such detriment would be reduced. It may be that in the end these proposals will not come to fruition. If major projects are planned it may be possible to negotiate leases, licences or easements over parts of the claim area from the Land Trust. **If no such agreements can be reached and a firm proposal would otherwise have gone ahead then significant detriment will have been suffered** by not only the Northern Territory Government, but also those people who would otherwise have worked in the area and to some extent the general public of the Northern Territory. **Without firm proposals before me I am unable to make any more specific comment on the matter.**

...

[386] ... 68) The creation of the proposed town has no sites of significance to Aboriginals nearby. If no agreement can be reached for the use of this land and the town is not developed, detriment will be suffered by local residents, both Aboriginal and non-Aboriginal, and by the government....”

The NTA submits, with respect, that the concept in the passages in bold quoted above work both ways, that is, likewise, if there are no firm proposals for agreements before the ALC the ALC can only comment along the lines that if satisfactory agreements are reached they will resolve or ameliorate the detriment to the extent of the agreement and, if no such agreements are reached, the detriment will persist.

In considering future use of land under claim the NTA submits as follows:

Section 50(3)(c) provides that the Commissioner shall comment on the effect which acceding to the claim either in whole or in part would have on the existing or proposed patterns of land usage in the region.

In Warlpiri and Kartangarurru-Kurintji Land Claim No. 2, Commissioner Toohey stated at paragraph 342:

“The use of the words ‘would have’ rather than ‘might result’ as appear in para. (b) suggests a reasonably tight area of inquiry. But at the same time it must be in regard not only to existing patterns of land usage but also to such as may be proposed; the words ‘in the region’ suggest that at least geographically the approach must be a reasonably broad one...”

However in Upper Daly Land Claim No. 32, Commissioner Kearney stated at paragraph 124:

“It may be that the claimants saw some advantage if they could establish that the concerns of a Government do not qualify for comment as detriment, because of the distinction in wording between s. 50(3)(b) and s. 50(3)(c) of the Act as regards ‘might’ and ‘would’. Comment is required under s. 50(3)(b) if detriment ‘might’ result from a grant; comment under s. 50(3)(c) is limited to the effect that a grant ‘would’ have on ‘existing or proposed patterns of land usage in the region’. I consider that the distinction between ‘might’ and ‘would’ does not have as much practical effect as at first appears. I accept the submission of counsel assisting, Mr Tiffin, in Exhibit 98 that the words ‘or proposed’ in s.50(3)(c) tend to diminish the difference in practical effect. I also accept the thrust of Mr Pauling’s submission in Exhibit 99C that an examination of ‘proposed patterns of land usage’ for the purpose of s.50(3)(c) is an examination of the uses to which lands are proposed to be put, and not the detail of how the land is to be developed to that usage pattern. That is subject to this qualification, that the evidence of the ‘proposed patterns’ must be such as to indicate that the proposal is real and of substance, and not chimerical.”

In Kidman Springs/ Jasper Gorge Land Claim No. 31, Commissioner Olney at paragraph 14.1 stated:

“There will inevitably be some overlapping between issues which arise in respect of s. 50(3)(b) and those arising under s. 50(3)(c). I have adopted the view that the former is intended to deal with the position of persons, communities and groups who presently have a direct interest in the land recommended for grant whereas the latter is directed more

to the effect a grant would have upon existing or proposed land usage in the wider region surrounding the claim area.”

In Cox River (Alawa/ Ngandji) Land Claim No. 14, Commissioner Kearney stated at paragraph 149:

“I am required to comment on the effect which acceding to the claim either in whole or in part would have on the existing or proposed patterns of land usage in the region. The approach must be reasonably broad.”

In Alligator Rivers Stage II Land Claim No. 19, Commissioner Toohey stated at paragraph 294:

“... My function is to comment on detriment that might result if the claim is acceded to and the effect which acceding to the claim may have on existing or proposed patterns of land usage. That requires consideration of detriment and usage with reference to the land recommended for a grant ... which together make up the eastern section of the claim area...”

In the Kaytej, Warlpiri and Warlmanpa Land Claim No. 25, Commissioner Toohey at paragraph 118 stated:

“...In many cases it is artificial to separate questions of detriment and patterns of land use and I do not propose to attempt that separation here. Rather, I shall look at the interests participating in the hearing and consider the extent to which each may be affected by a grant of this land.”

The NTA accepts that it is relevant and appropriate to consider, as far as possible, the likelihood of proposed future use.

In Murrarji Land Claim No. 15, Commissioner Kearney considered the future use of a stock route, even if it was unlikely to arise. At paragraph 165, the Commissioner stated:

“Viewed against this uncertain background I consider that while it is possible that the stock route may be needed in the future to move cattle, it cannot be said at this point that the need is likely to arise. On the other hand, it may prove a source of valuable assistance in time of drought. There is no existing user of the route for the movement of cattle; it has not been used for that purpose for some nineteen years. There are no firm proposals to use it for that purpose in the future, but the possibility of a future need cannot be discounted.... The issues

may need to be considered in the light of some general policy involving the future use, if any, to which is considered the stock route system as a whole should be put. If it is considered that the desirability of preserving what is left of the Murrarji Stock Route should yield to the claim, a grant of the claim area will achieve that end. To preserve the route, a grant should be made subject expressly to its continued existence. If the claim area were large the continued existence of a stock route across it which is not likely to be much used in the future would not present a major problem to traditional owners; but here, as Exhibit I indicates, the route occupies a reasonable proportion of the claim area and is so located that even occasional user would possibly create difficulties for resident owners.”

In Warnarrwarnarr-Barranyi (Borrooloola No. 2) Land Claim No. 30, Commissioner Gray at paragraph 6.3.5 stated:

“To the extent which a national park and marine park are proposed patterns of land usage in the region, if the islands the subject of this claim were to become Aboriginal land under the Land Rights Act, the effect on such proposed patterns is difficult to predict. This is because it would depend upon the outcome of any negotiations which might take place.”

- 11-12. The submissions at paragraphs 11 to 12 inclusive address the submissions on behalf of King Ash Bay, the letter from Glencore dated 25 January 2018 and Britmar’s submissions. The NTA understands that these parties have been or will be provided an opportunity to file a submission in reply.
13. The NTA again submits that detriment is not limited to the economic sense or to something that can be quantified. In this regard see *Neate* at page 309 where, commenting on the meaning of ‘detriment’ he notes:

“In his first land claim report Toohey J wrote, ‘Detriment is not defined but must bear its ordinary meaning of harm or damage which need not be confined to economic considerations any more than the reference to “advantaged” on para. (a) need be so confined [Borrooloola Land Claim at para 137]. So, for example, ‘social detriment’ may be suffered where people who have used an area for recreational purposes are denied access to it [Limmen Bight Land Claim at para 161].”

The long term tenure arrangements in respect of already granted Aboriginal land following the Intervention does go some way to ‘normalise’ land tenure as referred to in the Claimants’ Submissions. However, where land is not yet granted as Aboriginal land, the costs associated with obtaining access or tenure must be regarded as detriment. This remains the position even where examples of potential agreement making or automated systems such as the

new permit system are proposed. In the absence of current agreements or a fully functioning permit system with a binding commitment as to the terms and conditions on which permits are granted, the uncertainty of access and costs associated with access must be regarded as detriment that **might result** if the land is granted including as to its effect on existing or proposed patterns of land usage in the region.

Whilst the NTA does and will continue to take into account views of Indigenous peoples and negotiate in good faith where agreement is to be reached, comment still needs to be provided in relation to detriment. Detriment that might result if the claim were acceded to either in whole or in part needs to be considered on that basis and should not be disregarded or afforded less weight on the basis of proposed or speculative measures or agreements that may be reached to ameliorate or mitigate that detriment.

In previous land claims, for example the Yutpundji-Djindiwirritji (Roper Bar) Land Claim No. 36 and the Palm Valley Land Claim No. 48, the prospect of agreements being reached was considered to mitigate detriment. However, the parties in those land claims were further advanced in negotiations and expressed confidence that an agreement would be reached. By contrast, the parties in these Land Claims are yet to negotiate details of any agreement.

In Bilinara (Coolibah-Wave Hill Stock Routes) Land Claim Report No. 35, Commissioner Olney stated that:

“There is no reason to think that the present management ... will not be able to reach agreement with the traditional owners. The same could not be said with any confidence with regard to previous management...”

This suggests that the likelihood of any agreement should be assessed on a case by case basis.

In Daly River (Malak Malak) Land Claim No. 7, Commissioner Toohey at paragraph 342 commented that:

“If no such agreements can be reached a firm proposal would otherwise have gone ahead then significant detriment will be suffered... Without firm proposals before me I am unable to make any more specific comment on the matter.”

Permits

- 14-15. The NTA repeats and relies upon its Submissions in respect of the Lower Daly Land Claim No. 68 dated and filed on 26 July 2018, particularly paragraph 5 commencing at the foot of page 2.
16. The last sentence of this paragraph reads “Allowing for the level of planning, expense and time allocated to travelling from interstate to the McArthur River compared to the very modest time required to download a permit under the permit system being developed by the NLC, and the possible future administrative costs for the permit, assertions of ‘detriment’ as to either time or cost, should be given little weight.”

As the permit system is at the stage of being developed by the NLC, it would not be appropriate to comment on the complexity of the permit system and the amount of time required to apply and process the permit.

On 15 November 2017 the NLC publicly issued a document entitled “Information Sheet - Access to Tidal Waters on Aboriginal Land NLC waives requirement for a permit until 31 December 2018 ” (“the Information Sheet”). The Information Sheet is annexed at Schedule NTA 4 of the Review of Detriment Issues – Lower Daly Land Claim No. 68 – Submissions of the Northern Territory in Reply.

The Information Sheet states “[p]lease allow a minimum of 10 days to process applications.” There is no maximum timeframe set to process applications.

The NTA further refers to Commissioner Gray’s observation in his report on the Kenbi (Cox Peninsula) Land Claim No. 37 that:

“There would be some detriment arising from the inability of people to engage in spontaneous activities involving the use of Aboriginal land, including land in the inter-tidal zones.”

Accordingly due weight should be given to assertions of detriment as to time and cost.

17. Commissioner Gray commented that the detriment suffered in respect of the need to obtain permits would not be particularly great, nevertheless the Commissioner acknowledged that there was detriment (Kenbi (Cox Peninsula) Land Claim No. 37 paragraph 11.13.11).

Pastoral

22. The NTA adopts its remarks in respect of paragraphs 42 to 53 in the NTA submissions in reply to the Lower Daly Land Claim No. 68.

Fishing

33. Paragraph 33 of the Claimants' Submissions reference and adopt paragraphs 6-12, 13-15 and 23-36 of the Claimants' Submissions to the Review in Lower Daly River Land Claim No 68, these submissions adopt the relevant paragraphs in the NTA Submissions in Reply to the Lower Daly Land Claim No 68.
- 38-39. The NTA repeats and relies upon its Submissions in respect of the Lower Daly Land Claim No. 68 dated and filed on 26 July 2018, particularly paragraphs 25-27, 28, 30, 33 and 36.
43. The NTA rejects the allegation of hypocrisy in asserting cumulative detriment arising from the relocation of fishing effort. There is a finite number of fishing destinations in the Northern Territory, with some being more popular than others for certain species and quantities of fish stocks. Given that recreational fishing is a popular activity for both residents and visitors, the NTA invests in infrastructure to support recreational fishing and tourism and promotes the activity for the same reasons.

Mining

44. According to the data held by Mines and Energy, the land claim area covers the top right hand side of ML 29628 (noting that the Claimants' Submissions incorrectly references this tenement as ML 29268). The NTA is prepared to investigate further if provided with mapping that indicates that the claim area does not overlap ML 29628.

McArthur River Mining – MIM – Glencore: Bing Bong Port

59. The first sentence states that "...we do not accept that it is a matter of detriment because it is speculative...". In this respect we note that under section 50(3)(c), the Commission shall comment on the effect which acceding to the claim either in whole or in part would have on the existing or proposed patterns of land usage in the region.

The NTA refers to Commissioner Kearney's comment at paragraph 124 of the Upper Daly Land Claim No. 32 as cited above.

The proposed usage of land should be considered even if such future use is unlikely. In Murraraji Land Claim, Commissioner Kearney stated at paragraph

165 "...There are no firm proposals to use [the stock route] for that purpose in the future, but the possibility of a future need cannot be discounted".

Petroleum

- 61-63. From the NTA's regulatory perspective, compliance with the ALRA does not constitute a detriment. However, petroleum explorers may experience higher costs and delays in negotiating access agreements if the claim area is granted. Higher costs are not limited to cost of negotiation and any payments for access may include costs associated with delays such as loss of investors, contract failure or inability to obtain equipment and infrastructure.

Aboriginal Land Rights (Northern Territory) Act

Review of Detriment Issues

Aboriginal land claims recommended for grant but not yet finalised:

- 1. Garrwa (Wearyan and Robinson River Beds and Banks) Land Claim No 178 (Report No. 64)**
- 2. McArthur River Region Land Claim No 184 and part Manangoora Region Land Claim No 185 (Report No. 62)**
- 3. Seven Emu Region Land Claim No 186; Wollogorang Area II Land Claim No 187 and part of Manangoora Region Land Claim No 185 (Report No. 66)**

Supplementary Submissions of the Northern Territory in Reply

16 August 2018

1. On 9 August 2018, the Northern Territory (“NTA”) filed a document in the above matters entitled “Submissions of the Northern Territory in Reply”.
2. The NTA provides these Supplementary Submissions in Reply to paragraphs 35, 36 and 37 of the Submissions on Behalf of the Claimants dated 16 July 2018 (“Claimants’ Submissions”).

Fishing

- 35-36. The NTA reiterates that there are very significant difficulties associated with accurately depicting the mean low water mark at a contemporary point in time or over time. The result is that the low water mark is “in a practical sense unenforceable” including across the length and breadth of Aboriginal Land; the extent of which is defined by the claimants as upwards of 78% of the Territory coastline. In an oceanographic sense, the mean low water mark shifts constantly and is influenced by tides, currents, seismic activity and other phenomena.

The NTA submissions also make it clear that the catch figures are calculated from logbook returns submitted within grids that overlie the claim area (refer to page 4 of the detriment review table for the Maria Island and Limmen Bight

River Land Claim No. 71 and part Maria Island Region Land Claim No. 198, Lorella Region Land Claim No. 199 and part Maria Island Land Claim Region Land Claim No. 198 dated 4 June 2018).

36. The NTA rejects that it is avoiding what the NLC view as 'its responsibilities'. The Territory baseline referred to in page 11 of the NT Submissions to the Maria Island and Limmen Bight River Land Claim No. 71 and part Maria Island Region Land Claim No. 198, Lorella Region Land Claim No. 199 and part Maria Island Land Claim Region Land Claim No. 198 dated 4 June 2018 allows for the delineation of jurisdictional boundaries and the administration of mineral and energy titles, among other things. Compliance for exploration is very different from the type of compliance and enforcement required to manage commercial and recreational fishing access, especially in ambulatory waters.